To be argued by:
MARIAH W. DOLCE
(Times Requested: 10 minutes)

APL-2021-00053
Appellate Division Docket No. 531142
Workers' Compensation Board No. G091 9639

Court of Appeals
of the
State of New York

In the Matter of the Claim of

JOSEPH D. LIUNI,

Claimant-Appellant,

– against –

GANDER MOUNTAIN,

Employer-Respondent,

NEW HAMPSHIRE INSURANCE CO.,

Carrier-Respondent,

BROADSPIRE SERVICES, INC.,

Third-Party Claim Administrator-Respondent,

– and –

WORKERS' COMPENSATION BOARD,

Respondent.

BRIEF FOR EMPLOYER-RESPONDENT, CARRIER-RESPONDENT AND THIRD-PARTY CLAIM ADMINISTRATOR-RESPONDENT

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Dated: August 13, 2021

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PRELIMINARY STATEMENT

This Court held that loss of use of parts of an arm are distinct from loss of the (whole) arm. An "arm" is the part between the shoulder and the wrist.[1] An injury to a shoulder is, therefore, an injury to the arm. The New York State Workers' Compensation Law ("WCL") recognizes this interpretation in the context of compensation for an injured employee (also referred to as "claimant") who has sustained a permanent partial disability to those body parts enumerated under paragraphs (a) through (l) of § 15(3)—informally referred to as a "schedule loss of use award", "schedule award" or "SLU award".

Specifically, WCL § 15(3)(a) provides the schedule of compensation for (total) loss of the arm is equal to 312 weeks of compensation whereas partial loss or loss of use of the arm may be proportional to the loss. A percentage (%) is used to signify the proportion of loss or loss of use of the member in relation to the whole. In other words, total loss of the arm equals 100% loss of use of the arm for the purposes of compensation.

Awards of compensation are paid based on the presumption that an injured employee will have a future loss of earning power due to loss or loss of use of the member, regardless of any actual loss of earnings in the past, present, or future. In

[1] "Arm." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/arm. Accessed 29 Jun. 2021.

cases where an injured employee has already received compensation for partial loss or loss of use of a member, the law does not allow for double recovery.

In the present case, Appellant-Joseph D. Liuni, ("Liuni"), was found to have a 27.5% loss of use of the left arm. Because Liuni was previously awarded compensation for loss of use of the arm, the prior compensation award (22.5%) was used to offset the schedule award for this later injury. The Workers' Compensation Board ("Board") reasoned that compensation for partial loss or loss of use of the same member for a different injury may be offset by the prior compensation already received for partial loss or loss of use of the same member in order to determine the proportional loss of earning power attributed to the later injury. Liuni seeks to receive a double recovery for partial loss of use of his arm despite already receiving compensation for partial loss of use of the same arm.

The issue presented to this Court involves the formula or mathematical computation of a SLU award in those limited cases where an injured employee has sustained a permanent disability to subparts of the same member as a result of a different injury. The fact that the two injuries are to separate parts of the arm does not circumvent the plain meaning of an "arm" to include a shoulder and elbow. Any other formula would result in duplicative compensation, absent total loss of use of the arm.

The New York State Legislature has not explicitly separated the parts of the arm (i.e., shoulder, upper arm, elbow, forearm, wrist), to lend themselves to separate schedule awards. The omission is assumed to be intentional. Any alternate interpretation would "amount to a monetary windfall for a claimant that would compensate him or her beyond the degree of impairment actually sustained to the statutorily-enumerated body member" (Matter of Johnson v. City of New York, 180 A.D.3d 1134, 1136-1137, lv. granted, 35 N.Y.3d 915 [2020]). The Board found Liuni to have a five percent increase in presumed loss of earning power as a result of the later injury, and the decision was properly affirmed by the Appellate Division, Third Department.

This Court should affirm.

QUESTION PRESENTED

Question: Whether a schedule award for partial loss or loss of use of a statutorily enumerated body member may be offset by any prior SLU award received for partial loss or loss of use of the same member arising out of different injuries?

Answer: Yes. Because neither WCL § 15(3) nor the Workers' Compensation Board's Guidelines for Determining Permanent Impairment provide for separate SLU awards for a statutorily enumerated body member, absent total loss of use of the member. Rather, impairment of the member is encompassed by awards for the partial loss of use of the member.

STATEMENT OF FACTS

Although the parties disagree on the legal conclusions arising out of the facts and circumstances of this case, the background is generally agreed. To avoid a protracted recital of the facts, the following summary is limited to the circumstances surrounding the issue in controversy.

In 2007, Liuni sustained an injury to the left elbow that is the subject of Workers' Compensation Board Number 5085 2880 (R. 44; 77). After some dispute, Liuni agreed to a 22.5% SLU award for the left arm as a result of the 2007 injury

and received compensation by Notice of Decision filed on April 14, 2010 (R. 77; 99-100; 125).

Liuni subsequently developed left shoulder pain attributed to overcompensation for a right shoulder injury arising out of a 2014 injury that is the subject of the case before this Court (R.22-23; 25). The case was later amended to include a consequential left shoulder injury (R. 29)

By referral of his legal representative, Liuni was evaluated by Dr. Richard Saunders in 2018 (R. 37-43). The physical examination findings revealed a 27.5% loss of use of the left arm related to the 2014 injury (R. 42). Adding together the prior 22.5% SLU of the left arm for the 2007 injury and 27.5% SLU of the arm for the 2014 injury, Dr. Saunders reported an "overall" 50% SLU of the left arm (id.).

The Respondent-Employer, Gander Mountain, its Workers' Compensation Carrier-Respondent, New Hampshire Insurance Co., and its Third-Party Claim Administrator-Respondent, Broadspire Services, Inc., (hereinafter, collectively, "Broadspire"), had Liuni evaluated by Dr. Douglas Petroski (R. 49-60). Based on mobility deficits, Liuni was found to have a 20% loss of use of the left arm as a result of the 2014 injury (R. 54).

By direction of the Workers' Compensation Law Judge ("WCLJ"), telephone depositions of Dr. Saunders and Dr. Petroski were completed (R. 63-71; 85-98). Bearing on the issue at hand, Dr. Saunders' testified that he added together

the percentages for the 2014 SLU and 2007 SLU to find a 50% SLU of the left arm (R. 92-93). It was explained, "that those shouldn't be 'subsumed or combined' because the one was for the finding at the shoulder, the other was for the finding at the elbow, and that they are separate both in terms of dates of injury and in terms of findings on physical examination" (R. 93).

The WCLJ adopted the opinion of Dr. Saunders and found Liuni to have an overall 50% SLU of the left arm, inclusive of the 2007 SLU award (R. 120). The WCLJ concluded that the holding of Matter of Genduso v. N.Y.C. Dep't. of Educ., 164 A.D.3d 1509 (3rd Dep't. 2018), did not apply to the facts of this case (R. 137-143). By Notice of Decision filed on October 1, 2019, Liuni was awarded "an overall 50% SLU of the left arm, which is an increase of 27.5% SLU overall" (R. 157-159).

Upon appeal by Broadspire (R.160-167), the Notice of Decision was reversed, in part, by Memorandum of Board Panel Decision filed on January 30, 2020 (R. 160-167; 06-10). The Board found Liuni to have an overall 27.5% SLU of the left arm related to the 2014 injury and applied the holding of Matter of Genduso as "neither the statute nor the Board's guidelines lists the elbow or the shoulder as body parts lending themselves to separate SLU awards. Rather, impairments to these extremities are encompassed by awards for the loss of use of

the arm" (R. 08). As a result, Liuni was found to have a five percent increase in SLU of the left arm as a result of the 2014 injury (R. 10).

The Appellate Division, Third Department, affirmed the Board Panel Decision upon appeal by Liuni (R. 184-186).

This appeal follows.

ARGUMENT

THE THIRD DEPARTMENT PROPERLY AFFIRMED THE BOARD'S DECISION TO OFFSET THE SCHEDULE AWARD FOR PARTIAL LOSS OF USE OF THE LEFT ARM BY THE COMPENSATION PREVIOUSLY AWARDED FOR PARTIAL LOSS OF USE OF THE SAME ARM.

This Court should affirm the Third Department's decision that the Board properly offset Liuni's 2014 SLU award by the 2007 SLU award, resulting in a five percent increase in SLU for the left arm. The decision properly applied Workers' Compensation Law § 15(3), which allows compensation for a permanent partial disability involving partial loss or loss of use of a statutorily enumerated member and the Guidelines for Determining Permanent Impairment[2], adopted by the Workers' Compensation Board for the evaluation of a permanent impairment[3].

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[2] See New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity, (2012) ("2012 Guidelines"), *available at,* https://on.ny.gov/3sRRyVC (last visited, June 16, 2021); See also New York State Guidelines for Determining Permanent Impairment, (2018) ("2018 Guidelines"), *available at,* http://www.wcb.ny.gov/2018-Impairment-Guidelines.pdf (last visited, June 16, 2021).

[3] "A distinction is made between disability and impairment. Impairment is a purely medical determination made by a medical professional and is defined as any anatomic or functional

The Board properly found the left elbow and the left shoulder not to be eligible for separate schedule awards because they are encompassed by a single schedule award for the arm. In accordance with the statute and guidelines, the 2014 SLU award may be offset by the prior 2007 SLU award for the same arm, for a five percent increase in loss of use of the left arm. The determination follows the statutory interpretation of partial loss or loss of use of an arm to be compensated proportional to the permanent disability suffered by Liuni as a result of the 2014 injury. Accordingly, the holding of the Third Department should be affirmed.

A. The decision of the Board to offset compensation is consistent with the plain meaning of the statutory text and the intentions of the Legislature.

"When presented with a question of statutory interpretation, [a court's] 'primary consideration is to ascertain and give effect to the intention of the Legislature (Matter of Samiento v. World Yacht Inc., 10 N.Y.3d 70, 77–78 [2008], quoting Matter of DaimlerChrysler Corp. v. Spitzer, 7 N.Y.3d 653, 660 [2006]'" (Matter of Youngjohn v. Berry Plastics Corp., 2021 N.Y. Slip Op. 02017 [April 1, 2021]). "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (Majewski v. Broadalbin–Perth Cent.

abnormality or loss" (New York State Guidelines for Determining Permanent Impairment, at 6 [2018]).

School Dist., 91 N.Y.2d 577, 583 [1998]). The statute "must be construed as a whole and that its various sections must be considered together and with reference to each other" (Town of Aurora v. Village of E. Aurora, 32 N.Y.3d 366, 372 [2018], quoting Matter of New York County Lawyers' Assn. v. Bloomberg, 10 N.Y.3d 712, 721 [2012]). "The failure of the Legislature to include a matter within a particular statute is an indication that its exclusion was intended" (Pajak v. Pajak, 56 N.Y.2d 394, 397 [1982]).

Workers' Compensation Law § 15 "provides compensation for four different types of injury: permanent total disability, temporary total disability, permanent partial disability and temporary partial disability" (Matter of LaCroix v. Syracuse Exec. Air Serv., Inc., 8 N.Y.3d 348, 353 [2007], citing WCL §§ 15[1], [2], [3], [5]). An employee who sustains "a permanent partial disability may qualify for one of two broad categories of primary award under WCL § 15(3) — referred to colloquially as a 'schedule loss of use' award or a 'non-schedule' benefit — depending on the nature of the injury" (Matter of Mancini v. Office of Children & Family Servs., 32 N.Y.3d 521, 525-526 [2018]), quoting Matter of Raynor v. Landmark Chrysler, 18 N.Y.3d 48, 54 n 2 [2011]).

Any reliance on subdivision (u), of WCL § 15(3), is misplaced. The provision provides the method of payment of compensation after it has already been computed. It allows compensation to be "payable in lump sum upon the

request of the injured employee" (id.). The manner that compensation is paid does not prohibit a limitation on the amount of compensation an injured employee may receive.

There is also no challenge to the assertion that the Board may award separate schedules of compensation for loss or loss of use of "part of more than one member" (WCL § 15[3][u]). However, a "shoulder" and "elbow" are not separate members under the statute. They are component parts of an arm that lend themselves to a schedule award for loss or loss of use of the (whole) arm. This understanding is affirmed by the impairment guidelines adopted by the Board to reflect "advances in modern medicine" and provide guidance for permanency determinations with respect to injuries amenable to a SLU award pursuant to WCL § 15(3)(a) through (v) (WCL § 15[3][x]; See generally New York State Guidelines for Determining Permanent Impairment [2018]).

Special Consideration No. 8 of Chapter 5, of the 2018 Guidelines is illustrative of this point. A medical provider is prohibited from calculating a cumulative schedule loss of use for multiple parts of a single extremity. The Special Consideration provides:

> The schedule given is focused on the highest value part of the extremity. In case of a high schedule for one given part of the extremity, calculate first for the major loss in part involved. For example, amputation at the wrist equals 100% loss of use of the hand or equals 80% loss of use of the arm. If there are additional deficits of the elbow and/or shoulder add 10% to the 80% loss of use of the arm and the final schedule would be 90% loss of use of the arm (id., at 32).

In addition, Subsection No. 7 of Chapter 1, Section 3, of the 2018 Guidelines, provides, "[w]hen determining the value of a schedule loss of use, the total value of several range of motion deficits should not exceed the value of full ankylosis of the joint" (id., at 7). If Special Consideration No. 8 of Chapter 5 and Subsection No. 7 of Chapter 1 are read together, a cumulative schedule loss of use determination is prohibited for a single member that includes an injury to multiple parts. Hence, a proper reading of the 2018 Guidelines supports the principles of offset compensation for partial loss or loss of use of a statutorily enumerated body member.

Furthermore, the plain meaning of WCL §§ 15(7) and (8) mandates offset compensation. Neither subdivision permits separate compensation for a permanent injury to a body part for which an injured employee has already received compensation for loss or loss of use of as a result of a different accident. Rather, the provisions require that compensation for a prior injury be taken into

consideration in the calculation of compensation for a later injury when read together.

WCL § 15(7) provides for the determination of compensation for a later injury (or death) in relation to a previous disability. The provision does not guarantee compensation for a later injury but provides that the existence of a prior injury will not bar compensation for the later injury[4]. Subdivision (7) states, in the relevant part, the "average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury, provided that [the injured] employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability" (id.). That is a matter of shared liability among employers.

WCL § 15(8) provides the exception to compensation for a later injury that might be in excess of compensation permitted for the injury and considered "in conjunction" with a previous disability. The provision is separate and distinct from WCL § 15(7), in that it provides reimbursement of additional costs incurred for those limited injuries that meet the statutory requirements. Thus, neither provision

[4] A finding of maximum medical improvement is required in order to determine the level and degree of permanent impairment of the injury sustained by the claimant (See 12 N.Y.C.R.R. § 324.1[e]). A claimant may not be eligible for a schedule award prior to sustaining a second injury to a statutorily enumerated body member. In those circumstances, a claimant may even receive a schedule award for an injury sustained later in time. In that case, the later injury is considered an 'initial' injury in relation to any award of compensation for an injury to the same body member.

can be read to allow separate compensation for permanent impairments of statutorily enumerated body members. Instead, compensation can be shared among liable employers in those exceptional circumstance that have not been raised by either party in this case.

The enumerated schedules of compensation are the limits of compensation for loss or loss of use of a body member. Where an injured employee has sustained a partial loss or loss of use of a member, compensation "may be for a proportionate loss or loss of use of the member" (WCL § 15[3][s]). The absence of language that distinguishes an elbow and shoulder as body parts lending themselves to separate schedule awards must be construed as intentional. The lower court decision should, therefore, be affirmed by mandate of the plain meaning of the statutory text and the intentions of the Legislature.

B. The Board's application of the statute in those cases of separate injuries to subparts of the same body member are consistent with the precedent of this Court.

"The doctrine of stare decisis provides that once a court has decided a legal issue, subsequent appeals presenting similar facts should be decided in conformity with the earlier decision. Its purpose is to promote efficiency and provide guidance and consistency in future cases", (People v. Bing, 76 N.Y.2d 331, 337–38 [1990]), and therefore, obligates a court to consider precedent when presented with legal questions previously settled.

Liuni does not dispute the holding of Genduso, (164 A.D.3d 1509 [3rd Dep't. 2018]), that offset compensation is appropriate in those cases where an injured employee has already received compensation for partial loss of use of the same subpart of a member. Precedent reveals that subparts do not lend themselves to separate schedule awards, absent total loss of use of a member. Liuni improperly relies upon the holding of this Court in Matter of Zimmerman v. Akron Falls Park-Erie County, 29 N.Y.2d 815 (1971), to overturn Genduso, *supra*. However, the factual distinctions between those cases are perpendicular rather than parallel.

In Zimmerman, the claimant suffered an amputation of his left forearm, six inches below the elbow joint and encompassing the hand, in 1924, for which he received an "80% loss of use of the left arm".[5] The claimant returned to work with a prosthesis and sustained a subsequent injury to the left shoulder in 1967. This Court found the "[c]laimant's 1924 accident did not affect his left shoulder, which was injured in the 1967 accident causing the 50% loss of use of the left arm" (Zimmerman, 29 N.Y.2d at 817).

It would be unreasonable to say that Liuni is more seriously disabled than the claimant in Zimmerman, but it would be fair to say the two are equally compensated for their proportional loss or loss of use of those statutorily

[5] For example, the 2018 Guidelines provide: An "[a]mputation at the wrist equals 100% loss of use of the hand (80% loss of use of the arm)" (id., at 25).

enumerated members rendered permanently disabled. To allow separate schedule awards for injuries to the same statutorily enumerated member, absent total loss or loss of use of the member, would permit a partially disabled claimant to recover more than a claimant who has sustained an amputation of a given body member.

This Court accounted for the "exceptional condition" of Zimmerman in the holding of Matter of Flicker v. Mac Sign Co., 252 N.Y. 492 (1930). In that case, the claimant sustained a permanent injury involving a "fracture or chipping of the first metatarsal bone of the right foot, which effected movement of the first metatarsal-phalangeal joint, and thus the movement of the great toe." Due to the nature of the injury, the movement of the great toe was affected as "consequential [. . .] resulting from the injury of the foot". On appeal, this Court awarded the claimant a five percent schedule award for the right foot under WCL § 15(3)(d).

Justice Cardozo wrote, in the pertinent part, on the issue as follows:

> We think the award has its roots in a misconception of the statute. A toe is not to be treated as a separate member from a foot where loss of use of the foot includes as a normal consequence the loss of use of the toe [. . .] With the reservation for greater prudence of exceptional conditions, the scheduled compensation for loss of the larger member must be accepted as compensation for the loss of its component parts (Flicker, at 494).

This reasoning was clarified by the court in Matter of Earl v. Davis Box Toe Co., 261 A.D. 862 (3rd Dep't. 1941). In that case, the claimant sustained an injury to four fingers of his left hand in 1922 and received a 90% permanent loss of use

the left hand. In 1937, the claimant sustained a subsequent injury involving partial amputation of the left thumb and an injury to the phalangeal joint for which a 50% loss of use of the thumb was awarded. On appeal, the court found the "facts sufficient to sustain the award, and to bring the case within the exception noted in Flicker v. Mac Sign Company, 252 N.Y. 492" (Earl, 261 A.D. at 862).

Precedent has established that compensation for loss or loss of use of a "larger" statutorily enumerated member is presumed future loss of earning power that encompasses its component parts. The holding of Flicker, 252 N.Y. 492, does not contradict the holding of Zimmerman, 29 N.Y.2d 815, because the claimant did not suffer an amputation of a body part. Similarly, Liuni did not suffer an amputation to any part of the arm to warrant application of the holding of Zimmerman.

The deviation in the application of these cases is highlighted by the holding of Matter of Genduso, 164 A.D.3d 1509 (3rd Dep't. 2018). In that case, the claimant sustained injuries to the right ankle and right knee in 1997. He was awarded a 20% SLU of the right leg, encompassing the right ankle. The claimant reinjured his right knee in 1999 and was awarded a 12.5% SLU of the right leg. In 2013, the claimant injured his right knee again and was found to have a 40% SLU of the right leg, but the Board determined that the SLU award should be offset by

the two prior schedule awards of 20% and 12.5%. Accordingly, the claimant was awarded a 7.5% increase in SLU of the right leg.

The decision of the Board was affirmed by the Third Department because "neither the statute nor the Board's guidelines lists the ankle or the knee as body parts lending themselves to separate SLU awards. Rather, impairments to these extremities are encompassed by awards for the loss of use of the leg (See Workers' Compensation Law § 15[3][b]; New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity, ch. 8, p.43 [2012])" (id., at 1510).

Liuni has failed to cite any precedent to contradict the determination of the lower court that compensation for partial loss or loss of use of a statutorily enumerated body member can be offset by a prior compensation award for the same member due to a different injury, absent total loss or loss of use of member. Based on precedent, the Board properly offset the SLU award for the 2014 injury by the SLU award for the 2007 injury to the arm.

C. Any alternative application of the statute would be an unreasonable interpretation that results in duplicative compensation.

Where a claimant has sustained a permanent partial disability, a schedule loss of use award may be given for "the residual permanent physical and functional impairments to statutorily-enumerated body members" (Matter of Maunder v. B &

B Lbr. Co., 166 A.D.3d 1261 [2018]; See Matter of Genduso v. N.Y.C. Dep't. of Educ., 164 A.D.3d 1509 [3rd Dep't. 2018]), including, as relevant here, the arm (See Workers' Compensation Law § 15[3][a]; New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity, at 23-24 [2012]). "With respect to schedule injuries, SLU awards are made to compensate for the loss of earning power or capacity that is presumed to result, as a matter of law, from permanent impairments to statutorily-enumerated body members (See Workers' Compensation Law § 15[3][a]-[v]; Matter of Walczyk v. Lewis Tree Serv., Inc., 134 A.D.3d 1364, 1365 [2015], lv denied, 28 N.Y.3d 902 [2016]; Matter of Lamantia v. Midland El. Co., Inc., 59 A.D.3d 892, 894 [2009]; Matter of Gallman v. Walt's Tree Serv., 43 A.D.2d 419, 420 [1974]; Matter of Wilkosz v. Symington Gould Corp., 14 A.D.2d 408, 409–410, [1961], aff'd, 14 N.Y.2d 739 [1964])" (Matter of Taher v. Yiota Taxi, Inc., 162 A.D.3d 1288, 1289 [2018]). The authority remains with the Board as to whether a claimant is entitled to an SLU award and the calculated percentage are factual questions for the Board to resolve (Matter of Maunder, 166 A.D.3d at 1261; See also Matter of Empara v. New Rochelle Sch. Dist., 130 A.D.3d 1127 [2015]).

Pursuant to Section 1.3, Role of Examining Medical Providers, of the 2018 Guidelines, "[i]t is the responsibility of the medical provider to submit medical evidence that the Board will considering making a legal determination about

disability" (New York State Guidelines for Determining Permanent Impairment, at 6-7 [2018]). The medical provider's responsibility in a workers' compensation permanency evaluation is to offer the objective evidence to be considered by the Board for a legal determination about disability.

In the present case, the objective evidence offered by Liuni's consultant reveals a 27.5% SLU of the left arm related to the 2014 injury. Dr. Saunders acknowledged that the 22.5% SLU from the prior 2007 injury was gratuitously added to his findings irrespective of physical examination findings at the elbow. Contrary to the Dr. Saunders' opinion, loss of use in the two joints must be "subsumed or combined", at least in those cases where an injured employee has sustained multiple injuries to subparts of the same member. The alternate interpretation of the statute that would result in duplicative compensation. Therefore, the opinion of Dr. Saunders must be limited to the medical question of permanent impairment rather than the legal conclusion of duplicative compensation for loss of use of subparts of a member.

Accordingly, the determination by the Board to offset the prior 22.5% SLU for the 2007 injury from the 27.5% SLU for the 2014 injury should not be disturbed as there is no error of fact. Dr. Saunders provided no medical evidence to support the determination that the 2014 injury should be added to the balance of the prior compensation for loss of use of the same arm. If a factual inquiry should

be undertaken, then the fact that Dr. Saunders did not physically examine the left elbow must render his opinion speculative in nature. The doctor merely added together the prior SLU award to the SLU measured at the time of his examination notwithstanding of objective medical evidence as called for by the 2018 Guidelines. Based on the foregoing, the Board properly offset the 2014 SLU award by the prior 2007 SLU award for the same member in order to find Liuni has an overall five percent increase in SLU of the left arm, or loss of earning power as a result of the 2014 injury.

CONCLUSION

WHEREFORE, this Court should affirm the decision of the Third Department.

DATED: August 13, 2021
Albany, New York

Respectfully submitted,

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AFFIRMATION OF COMPLIANCE

Pursuant to 22 NYCRR 500.13 [c] [1], Mariah W. Dolce, Attorney Registration No.: 5684915, hereby affirms that this brief was prepared on a computer using Times New Roman 14-point type. This brief contains 5,360 words inclusive of point headings, footnotes, signature blocks, table of contents, and table of citations, and exclusive of proof of service, affirmation of compliance, or any addendum authorized pursuant to 22 NYCRR 500.1 [h].

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